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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1264

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION and LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, International Longshoremen's Association and Local 1291, International Longshoremen's Association, respectfully pray that a Writ of Certiorari issue for review of the final judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled matter on December 27, 1967. Said judgment reverses an Order of the District Court for the Eastern District of Pennsylvania, which denied respondent's motion to compel petitioner to submit a dispute to arbitration, and remanded the case for entry of judgment compelling such submission.

OPINIONS AND ORDERS OF THE COURTS BELOW.

The Opinion and Order of the District Court for the Eastern District of Pennsylvania, reported at — F. Supp. —, is printed as Appendix B hereto (p. 14). The Opinion of the Court of Appeals for the Third Circuit, reported at — F. 2d —, is printed as Appendix C hereto (p. 20). The Judgment of said Court of Appeals is printed as Appendix D hereto (p. 30).

JURISDICTION.

The Judgment of the Court of Appeals was entered on December 27, 1967 (p. 30). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED.

1. In ordering a labor union to submit to arbitration an issue which the collective bargaining agreement reserves for negotiation between the parties, and in failing to apply the real intent of the contract as agreed by employer's counsel at trial, did not the Court below commit fundamental error by substantially over-applying the "trend to arbitration", so as to conflict directly with the contract-oriented national labor policy announced by this Court?

2. In setting aside the specific findings of fact by the Trial Judge and in interpreting the labor agreement without reference to such findings, did not the Court below violate Federal Rule 52(a)?

PROCEDURAL RULE INVOLVED.

The Federal Rule of Civil Procedure involved is Rule 52(a).

STATEMENT OF THE CASE.

This case arose as an action by respondent, Philadelphia Marine Trade Association (PMTA), an employers' organization, to require petitioner, Local 1291, International Longshoremen's Association (ILA) to submit to arbitration the question whether, under the collective bargaining agreement, the employers could compel longshoremen to change their established method by unloading two pallets of frozen meat in a draft, rather than one pallet as theretofore. The union insisted that such a change in operation should be negotiated, and not arbitrated, under the specific provision of the agreement.

The labor agreement contains an arbitration clause (No. 28); but it also contains a clause (No. 13(d)), specifically excepting from arbitration questions involving changes in established methods of operation and the application of technological advancements, providing that these shall be subject to negotiation.[1] Further, the arbitration clause itself excepts from its operation "disputes or grievances arising under the terms and conditions of paragraph 13(d) hereof".

The testimony on behalf of petitioner was that since pallets were first used in the Port of Philadelphia, the established custom was that only one pallet of cargo was lifted per draft, until the instant dispute arose.[2] Testimony on behalf of the employers was that in the twenty years since the inception of the use of pallets in Philadelphia there were several dozen incidents of two-pallet drafts. The Trial Judge found, after hearing and seeing all

1. These provisions are set out hereinafter as Appendix E (p. 32).

2. There was an exception, in 1967, when an attempt at two-pallet drafts was made, but ceased when a union official appeared.

the witnesses, that the use of two-pallet drafts was "very sporadic and not on a regular basis", that "the union and its officials were not aware of the occasional unloading of two pallets to a draft until the incident [here involved]"; that "the established practice . . . has been through the use of one pallet drafts", and that "it has not been an established practice . . . to unload frozen meat or other cargo through the use of two pallet drafts." (17). The Trial Judge concluded that the Court had jurisdiction to determine arbitrability under the contract, and that since the method attempted by the employers would be a change in established procedure, it was subject to negotiation, and not arbitration.

The Court of Appeals reversed, holding that the Trial Judge had misinterpreted the effect of the labor contract, ignoring the admission by respondent's counsel at the trial as to the effect of the contract, and refusing to apply the findings of fact made by the Trial Judge.

REASONS FOR GRANTING THE WRIT.

I. Arbitration Is a Matter of Contract. The Decision of the Court of Appeals, Ignoring the Intent of the Labor Agreement as Conceded by Employers at Trial, and Compelling the Union to Arbitrate an Issue Which the Labor Agreement Makes Negotiable, Conflicts With the National Labor Policy Announced by This Court: United Steelworkers v. Warrior & Gulf Navigation Co., 363 U. S. 574; Wiley & Sons v. Livingston, 376 U. S. 543.

At trial in this case, counsel for the employers agreed that if the use of two pallets per draft *was* a change in the established method in the Port, then paragraph 13(d) of the labor agreement *would* control, and the issue would have to be *negotiated* and not arbitrated.[3] Thus, the agreed factual issue at the trial was the nature of the "established method of operation" and whether the employers' demand would be a change therein. The legal proposition urged by the employers was that the question of arbitrability, itself, was to be decided by the arbitrator, and not by the Court.[4]

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3. At the trial, in pin-pointing the legal and factual issues, counsel for the employers said:

> "It was our position, Your Honor, that if 13(d) applied there would have to be one of the three things among others, in operation at that time. Either there would have to be a change in the established work method, or there would have to be a change in the number of men which had heretofore handled the cargo, or this operation of two pallets to a draft would have to constitute a technological advancement in method or machinery." (Appendix, Court of Appeals, 19a).

4. Counsel for the employers said, in his opening remarks that "This question as to whether 13(d) applied, or whether 13(a) and (c) applied should be submitted to arbitration." (Appendix, Court of Appeals, 20a). Further, he said:

> "And so, Your Honor, in this case, we say that whether or not this operation is covered under Section 13(d) or not is a question for the arbitrator to decide, and that is the reason why we ask this dispute be submitted to arbitration." (23a)

The Trial Judge determined that the *Court* has jurisdiction to decide whether under the agreement a party is bound to arbitrate, and what issues he must arbitrate, as consistently held by this Court.[5] After hearing the testimony and having opportunity to see the witnesses, the Trial Judge found that the employers' order *would* be a change of method, and, therefore, negotiable, and not arbitrable, stating:

> "We can say *with positive assurance* in this case that the dispute in question is not covered by arbitration." (Emphasis supplied.) (18).

However, the Court of Appeals, over-applying the federal arbitration policy to the point of conflict with its very contractual basis, ignored the real meaning and intent of the negotiation provision of paragraph 13(d) of the contract, as admitted by the employers' counsel, and interpreted it as providing a double standard: that a change in established method desired by the *union* must be *negotiated,* but that a change desired by the *employers* should be *arbitrated.* The equal application of the contract to both sides, clearly the intention of the contract, and so admitted by the employers, has thus been destroyed. This wholly conflicts with the policy announced by this Court in the Steelworkers Trilogy,[6] and, *Wiley & Sons v. Livingston,* 376 U. S. 543, 547, 11 L. Ed. 2d 898, 903 (1964). This Court has emphasized that no matter how strongly

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5. *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U. S. 574, 582, 583 (n. 7), 80 S. Ct. 1347, 4 L. Ed. 2d 1409, 1417, 1418; *Atkinson v. Sinclair Refining Co.,* 370 U.S. 238, 241, 82 S. Ct. 1318, 8 L. Ed. 2d 462, 465; *John Wiley & Sons., Inc. v. Livingston, etc.,* 376 U. S. 543, 546-547, 84 S. Ct. 909, 11 L. Ed. 2d 898, 902-903.

6. *United Steelworkers v. Enterprise Wheel and Car Corp.,* 363 U. S. 593, 4 L. Ed. 2d 1424 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U. S. 574, 4 L. Ed. 2d 1409 (1960); *United Steelworkers v. American Manufacturing Co.,* 363 U. S. 564, 4 L. Ed. 2d 1403 (1960).

may be expressed the policy favoring arbitration, "arbitration is a matter of contract" and that

> ". . . a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. . . ." (*United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U. S. 574, 582, 4 L. Ed. 2d 1409, 1417).

In *Wiley*, this Court said:

> " 'Under our decisions, whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties' . . . The duty to arbitrate being of contractual origin, a compulsory submission to arbitration cannot precede judicial determination that the collective bargaining agreement does in fact create such a duty." (376 U. S. at 547, 11 L. Ed. 2d at 903).

It was stated by this Court that although the arbitration clause may be of "wide breadth", the existence of "a number of specific exceptions" thereto will be given effect if applicable (376 U. S. at 553, 11 L. Ed. 2d at 906).

In the instant case, the specific exceptions to the duty to arbitrate were specifically set forth by counsel for the employers at the trial, in accordance with the excepting clause of the labor contract. The real intent of the negotiation clause 13(d), was conceded and expressed in detail in delineating the legal and factual issues. Counsel for the employers said that 13(d) would apply if one of three facts should appear: that the two-pallet draft would be "a change in the established work method"; that there would be "a change in the number of men" or that the two-pallet operation would be "a technological advancement in method or machinery" (Appendix, Court of Appeals, 19a). He

stated that PMTA took the position, "that there was no change in the established method of operation; . . . there was no change in the number of men handling this cargo", and that handling two pallets per draft "was not a technological advancement in either machinery or method, and for that reason Clause 13(d) did not apply." (Appendix, Court of Appeals, 19a). Thus, the factual issue was clarified, and upon that basis the action was tried, and the Trial Judge made his specific findings of fact. There was no change in this position in argument before the Court of Appeals. The failure of the Court of Appeals to give effect to the agreed intent of the contract, which was the guideline of the trial, was as much a refusal to measure arbitrability according to contract as if the contract itself spelled out this detailed intent in so many words.

In reaching the meaning and effect of such agreement, the real question to be answered is not an artificially or artfully derived interpretation, but the actual intent of the parties. It is clear by agreement here, that the parties intended that any desired change in established methods or the institution of technological advances must be negotiated and not arbitrated. A double-standard meaning as declared by the Court of Appeals clashes with the mutuality which is solely consistent with collective bargaining. It is reasonable and expected that the parties desired to retain for their *own* consideration and decision all questions concerning changes in job opportunities and cost of operation arising out of changes in methods of operation. This intent must be given full effect, and may not be subjugated to a policy that is itself conditioned upon the intent and agreement of the parties.[7]

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7. Indeed, the preservation to negotiation between union and employer of factors directly affecting job opportunities, such as methodological or technological changes, is the sine qua non of collective bargaining, and any delegation of such issues to an arbitrator would be an abdication by the union from its duty of representation. Thus,

The national labor policy, as expressed by this Court, favors arbitration, but *only* where the intent of the parties so provides. To compel arbitration contrary to the agreement of the parties is in direct conflict with such national policy. This Court must warily guard against over-application by the lower courts of the currently expressed arbitration principle. It must not be broadly applied as *the* method of decision. This Court has based its announcements of policy upon the intent and agreement of the parties. The instant case provides an example of the dangers which must be watched for and avoided. If the decision of the Court of Appeals is not reviewed, a dangerous precedent will have been set.[8]

II. The Findings of Fact by the Trial Judge Were Not Clearly Erroneous. The Decision of the Court of Appeals Ignoring These Findings and Interpreting the Labor Agreement Without Reference Thereto Violated F. R. C. P. 52(a).

F. R. C. P. 52(a) provides:

> ". . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. . . ."

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such specific exclusionary clauses from arbitration have grown in number as arbitration clauses have grown. See, e.g., *Gulf and South American Steamship Co. v. National Maritime Union*, 360 F. 2d 63 (5 Cir., 1966), where the issue of "manning scale", resulting from automation of ships, was specifically excluded from arbitration, and the Court held that the arbitrator was without jurisdiction.

8. Since arbitration deprives the judiciary of jurisdiction over the particular controversy, an agreement providing for arbitration must be strictly adhered to; it must be carefully construed so as not to force a party to submit to arbitration a question which he did not intend to submit. *Brotherhood of Railway, etc., Clerks v. Norfolk Southern Railway*, 143 F. 2d 1015, 1017 (4 Cir., 1944); *B. Fernandez, etc. v. Rickert Rice Mills*, 119 F. 2d 809, 815 (1 Cir., 1941).

The agreed issue of fact central to the trial herein was whether or not the use of a two-pallet draft would be a change in the established method of operation in the Port of Philadelphia. There was much testimony on both sides, most of which was conflicting, and all of which required evaluation by the Trial Judge.

At best, the employers' testimony was that during the 20-odd year period involved, a mere sprinkling of two-pallet drafts occurred. The Trial Judge observed that even assuming the veracity of plaintiff's evidence, whereas "literally thousands of ships have loaded and discharged cargo in the Port of Philadelphia since World War II when pallets were first used . . . the plaintiff could name only several dozen incidents at most when two pallet drafts were employed. . . ."; that "this has been very sporadic". (18). The impression presented, even if believed, was at most, as described by the District Judge, a "sporadic and clandestine use of two pallets to a draft" which "is certainly not an established method of operation under the labor contract". (18). Further, in any view, the evidence is clear, as the Court found, that on "the few times that the two pallet method was used, it was done without the knowledge of the union or its officials". (18).

The Court of Appeals, refusing to accept the fact-findings by the Trial Judge, concluded that "the two pallet operation, *whatever its extent,* was in existence prior to the 1964 employment contract" (28). There was no conclusion that the District Judge's findings were clearly erroneous; indeed, under the testimony, such a conclusion could not be made. In so acting, the Court of Appeals set aside the Trial Judge's findings in violation of Rule 52(a).

CONCLUSION.

The action of the Court of Appeals sets a dangerous precedent of over-emphasis of the policy favoring arbitration. The law, as stated by this Court, is *not* that all issues between the union and employer must be arbitrated; to the contrary, only those issues agreed by the parties to be subject to arbitration are to be arbitrated. In the instant case, issues involving changes in an established method of procedure were specifically excepted and confined to negotiation. The decision of the Court of Appeals, ignoring this specific intent, results in an *excessive* application of the arbitration policy. This was substantial error, and should be reviewed and reversed, and the order of the District Judge reinstated.

Respectfully submitted,

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MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
Counsel for Petitioners.

APPENDIX A.

Federal Rules of Civil Procedure.

RULE 52.

FINDINGS BY THE COURT.

(a) *Effect.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; . . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

APPENDIX B.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 42228.

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

and

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

OPINION.

DAVIS, *J.* March 14, 1967

The plaintiff, Philadelphia Marine Trade Association, has brought this action to require the defendant union to submit to arbitration pursuant to paragraphs 13(a), 13(c), and 28 of their labor contract a dispute concerning the right of the Association to compel the longshoremen to unload two pallets of frozen meat in each draft rather than one pallet. The defendant contends that the issue is one for negotiation and not arbitration pursuant to paragraph 13(d) of the contract.

We have held a hearing and now make the following:

FINDINGS OF FACT.

1. On February 28, 1967, a dispute arose between the parties concerning the number of pallets of frozen meat to be discharged in each draft from the S/S CAPORTEGAL.

2. The representatives of the union instructed the longshoremen not to unload the cargo with more than one pallet per draft.

3. The plaintiff attempted to have the union agree to arbitrate the dispute under the contract but the defendant refused on the ground that the matter was not one for arbitration.

4. The pertinent portions of paragraph 13 of the labor contract read:

"The employer to have the right to so regulate the work of stevedoring a ship as to:

(a) Best attain an orderly, safe and efficient movement of the cargo into or out of the vessel.

(c) Making the best use of the skill and aptitude of the workers with the right to apply available mechanism and motive power to minimize wasteful manual work.

(d) Nothing herein contained shall be construed as warranting a demand on the part of the union to change established methods of operation or to change the number of men heretofore employed in gangs, providing that a committee of three representatives of the Union and three representatives of the Employer shall immediately following the execution of this agreement hold meetings for the purpose of

reaching an agreement upon the number of men on certain commodities where disputes regarding the number of men may exist. In the event that technological advancements in machinery or methods in the future are introduced by the Employers, the number of men thereforth to be employed for handling the particular commodities shall be the subject of negotiation between the subcommittee herein created. This clause shall not be subject to the grievance and arbitration Clause No. 28."

5. The pertinent portion of paragraph 28 of the labor contract reads:

"GRIEVANCE PROCEDURE: All disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement and all questions involving the interpretation of this agreement other than any disputes or grievances arising under the terms and conditions of paragraph 13(d) hereof, shall be referred to a Grievance Committee, which shall consist of two members selected by the Employers and two members selected by the Union."

6. While the defendant has on occasion unloaded two pallets of cargo to a draft as early as 1963, the use of this method has been very sporadic and not on a regular basis.

7. Even when the two pallet method was employed it was not the exclusive method used on any ship, for one pallet loads were utilized also.

8. The union and its officials were not aware of the occasional unloading of two pallets to a draft until the incident on the S/S CAPORTEGAL on February 28, 1967.

9. Since World War II when pallets were first employed by stevedores, the established practice for unloading frozen meat and other cargo on the Philadelphia waterfront has been through the use of one pallet drafts.

10. It has not been an established practice on the Philadelphia waterfront to unload frozen meat or other cargo through the use of two pallet drafts.

CONCLUSIONS OF LAW.

1. The Court has jurisdiction over the parties and subject matter. See 29 U. S. C. § 185.

2. The Court has power to compel a union to submit an issue to arbitration if under the labor contract it is a matter subject to arbitration.

3. It is for the Court to determine whether the dispute is subject to arbitration under the contract.

4. The use of two pallet drafts is a change in the established method of operation, and the dispute therefore comes within paragraph 13(d) of the labor contract.

5. The dispute in question is not subject to arbitration but rather to negotiation.

DISCUSSION.

It is clear that this Court has the power to compel a union to arbitrate a dispute or grievance if the court determines that it is a matter for arbitration under the labor contract. 29 U. S. C. § 185; *Wiley v. Livingston*, 376 U. S. 543 (1964); *Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U. S. 593 (1960); *Steelworkers v. Warrior & Gulf*

Navigation Co., 363 U. S. 574 (1960); *Steelworkers v. American Manufacturing Co.*, 363 U. S. 564 (1960); *Textile Workers v. Lincoln Mills*, 353 U. S. 448 (1957). Since Congressional policy favors the settling of labor disputes through arbitration, the Supreme Court has stated, "an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Steelworkers v. Warrior & Gulf Navigation Co.*, supra, at 582-83.

We can say with positive assurance in this case that the dispute in question is not covered by arbitration. We have a situation where literally thousands of ships have loaded and discharged cargo in the port of Philadelphia since World War II when pallets were first used. Even assuming the veracity of plaintiff's evidence, the plaintiff could only name several dozen incidents at most when two pallet drafts were employed, and even its witnesses could name only a few ships on which this method was employed. The plaintiff never produced its records which could have shown the number of times this method was used and the names of the ships on which it was employed. We can only conclude that the failure to produce this best evidence indicates that the use of two pallet drafts was not at all extensive. Moreover, the few times that the two pallet method was used, it was done without the knowledge of the union or its officials. These officials spend a great deal of time on the waterfront observing the loading and discharging of cargo, and they never once observed the two pallet method until February 28, 1967. The sporadic and clandestine use of two pallets to a draft is certainly not an established method of operation under the labor contract, and the plaintiff's attempt to employ this system

is a change in the established method. This dispute is one for negotiation between the parties under paragraph 13(d) of their collective bargaining agreement.

ORDER.

AND Now, this 14th day of Mareh 1967, it is hereby Ordered that the plaintiff's motion to compel the defendant to submit the dispute in issue to arbitration be and the same is DENIED.

BY THE COURT:

JOHN MORGAN DAVIS, *J.*

APPENDIX C.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 16583.

PHILADELPHIA MARINE TRADE ASSOCIATION,
Appellant,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued October 31, 1967.

Before McLAUGHLIN, KALODNER and GANEY, *Circuit Judges.*

OPINION OF THE COURT.

(Filed December 27, 1967.)

By McLAUGHLIN, *Circuit Judge.*

Our sole query here is whether a dispute between the multi-employer association, appellant, Philadelphia Marine Trade Association, and the representatives of the employees should have been handled under Paragraph "28 Grievance

Procedure'' of the employment contract between the parties or under Paragraph 13(d) thereof. The matter was brought to a head on February 28, 1967. Atlantic and Gulf Stevedores, Inc. one of the Association group, was discharging a cargo of frozen meat from a vessel berthed in the Port of Philadelphia. Such meat in cartons is strapped to wooden platforms called pallets. That day two groups of longshoremen were unloading the meat two pallets to a draft or load. While this was going on, a business agent of the Union came to the area and ordered the men to handle the meat one pallet to a draft. The Association has urged since the particular incident that a two pallet draft discharge occurred infrequently and only because of special factors, principally the type of stowage. The agent insisted that the practice was contrary to the employment contract and refused to permit the men to so function. The employer offered to arbitrate and the agent refused. There was a meeting between representatives of the Association and the Union the next day. The Union maintained that the question under the employment agreement was one for negotiation. The Association had the firm view it was arbitrable.

Thereafter on March 7, 1967, the Association filed a complaint in the District Court under the Labor Management Relations Act, 29 U.S.C. § 185, which outlined the controversy. It explained that the same ship, the unloading of which had triggered the litigation, was arriving in the Port of Philadelphia with the balance of its undischarged frozen meat cargo and that another vessel also carrying a frozen meat cargo would so dock around the same date. Because of this an immediate hearing was requested. The matter was heard March 8, 1967. Evidence was presented by both sides. R. E. Coffey, port manager for the Association, gave testimony on behalf of the plaintiff. It was centered on the practice in the Philadelphia harbor with refer-

ence to discharge of frozen meat cargoes, particularly as to the use of two pallet drafts. The witness said that he had personal knowledge of the facts that meat had been discharged by the two pallet method at some previous times. From his records he named cargoes or parts of them so discharged on August 29, 1966, October 21, 1966, December 28, 1966, January 9, 1967, January 23, 1967, February 6 and 7 and February 28, 1967 which latter was the discharge that focused the problem and resulted in the District Court action. It developed that Mr. Coffey had direct knowledge of the December 29, 1966 discharge by two pallet draft. The other discharge information was given him by his supervisors. His list of those ships and their discharge did not show which pallet method had been used. Mr. Owens, superintendent for Lavino Shipping Company was a witness. He first saw meat discharged in two pallet drafts October 1966. The next one he saw was in February 1967. After that he saw that type of discharge from approximately three other vessels. Four years ago he saw television tubes so discharged and in approximately 1965 he saw the same practice with frozen fish. Mr. Doran, stevedore superintendent for Atlantic & Gulf Stevedores at the Philadelphia port, first saw two pallet frozen meat discharges in September 1966. Since then down to recently he witnessed seven or eight of that sort of discharge to and including February 28, 1967. Mr. McGowan, vice-president of another stevedore concern which did not handle frozen meat, has seen fungicide, tiles, nails, wrapping paper and TV blanks so unloaded since 1963 down to the "present time." Captain Kristensen has been Philadelphia port captain for Stockard Shipping & Terminal Corporation for the last about six and a half years. He first saw two pallet discharge of frozen meat ship cargo on January 13, 1967, after that on January 18, 1967 and February 9, 1967. In 1966 he saw tiles thus unloaded at least twice.

Mr. Coyle, superintendent for two Philadelphia port concerns, saw two pallet loading of pipe fittings in 1965. He also has seen tile, TV blanks and nails in two pallet discharges. The nails he saw six or seven different times starting June or July 1966. He saw tiles so disposed of first in 1965, three or four vessels almost right in a row, and the last time prior to the hearing was "Within the past three months." This witness concluded plaintiff's evidence. The defense motion to dismiss on the ground that two pallet practice had not been established was taken under advisement.

The first defense witness was Mr. Moock, International Union Vice President for the Port of Philadelphia area. He has been on that waterfront since 1925. He said that from his personal knowledge "The normal procedure is lifting one pallet at a time." He said he had never seen longshoremen at said port lift two pallets at once until a week prior to the hearing. He averages at least four days a week on the Philadelphia waterfront. This witness stated he never saw two pallet discharge of television tubes, frozen fish, nails, tiles or two pallet loading of fungicide. Generally, he said, he had never seen two pallets of any commodity in a draft. Mr. Askew, president of the Local of the Union which is based in the Philadelphia port, said he had been on that scene for twenty-five years. He described the practice there as to pallets to be one to a draft. Mr. Johnston business agent of the Local, on the same waterfront thirty years, said that at that port one pallet is handled to a draft, that he had never seen more than one handled in a draft. He was the agent who stopped the longshoremen taking two pallets to a draft, which incident precipated this suit. Mr. Talmadge, another agent of the Local, testified that the Philadelphia port practice was one pallet to a draft, that the only time he saw two was on March 8, 1967 when the stoppage occurred. Mr. Divine, another

Local agent, thirty-one years on said waterfront, said it was one pallet practice there and the only time he saw two was when his partner Johnson stopped the work. Mr. Smith, another Local agent, twenty-four years at the port involved, always found the practice there to be one pallet to a draft. Mr. Kane, assistant financial secretary of the Local, on that waterfront since 1933, said the custom always has been one pallet to a draft; he never saw more than that.

Paragraph 28 of the employment contract set up "Grievance Procedure" and an elaborate system of Arbitration. The parts of 28 particularly pertinent to our problem read:

> "28. GRIEVANCE PROCEDURE: All disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement and all questions involving the interpretation of this agreement other than any disputes or grievances arising under the terms and conditions of paragraph 13(d) hereof, shall be referred to a Grievance Committee, which shall consist of two members selected by the Employers and two members selected by the Union.
>
> • • •
>
> Should the terms and conditions of this agreement fail to specifically provide for an issue in dispute or should a provision of this agreement be the subject of disputed Interpretation, the Arbitrator shall consider port practice in resolving the issue before him. If the Arbitrator determines that there is no port practice to assist him in determining an issue not specifically provided for in the collective bargaining agreement or no port practice to assist him in resolving an interpretation of the agreement, the issue shall become the subject of negotation between the parties. There shall be no strike and no lockout during the pendency of any dispute or

issue while before the Grievance Committee, the Joint Panel or the Arbitrator."

Paragraph 13 is also important. That reads:

"13. The employer to have the right to so regulate the work of stevedoring a ship as to:

(a) Best attain an orderly, safe and efficient movement of the cargo into or out of the vessel.

(b) Protecting the safety and health of the workers.

(c) Making the best use of the skill and aptitude of the workers with the right to apply available mechanism and motive power to minimize wasteful manual work.

(d) Nothing herein contained shall be construed as warranting a demand on the part of the union to change established methods of operation or to change the number of men heretofore employed in gangs, providing that a committee of three representatives of the Union and three representatives of the Employer shall immediately following the execution of this agreement hold meetings for the purpose of reaching an agreement upon the number of men on certain commodities where disputes regarding the number of men may exist. In the event that technological advancements in machinery or methods in the future are introduced by the Employers, the number of men thereforth to be employed for handling the particular commodities shall be the subject of negotiation between the subcommittee herein created. This clause shall not be subject to the grievance and arbitration Clause No. 28."

Appellant argues that there was an admitted dispute involving the interpretation of the bargaining agreement

which under the latter and the applicable law should have been submitted to arbitration. United Steelworkers v. Enterprise Corporation, 363 U.S. 593 (1960) is cited in support of this. The contention is that the question was not excluded by the arbitration clause and that the trial judge erred in holding that Section 13(d) of the agreement controlled. Stressing United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960), appellant urges that the court had no business weighing the merits of the grievance involved. It attacks the weight of the Union testimony by submitting that though the Union officials allegedly did not see the two pallet operation that does not prove the two pallet method was not used in the past since it was not exclusive and only employed when feasible, depending upon stowage and other factors. It insists that the propriety of the use of the two pallet draft was for the arbitrator's determination. Finally, appellant asserts that the Court's refusal to submit the question to arbitration violates the national labor policy.

Beyond doubt if this controversy is within Paragraph "28. Grievance Procedure" of the existing labor contract between the parties, the District Court was bound to so decide. United Steelworkers v. Enterprise Corporation, supra; United Steelworkers v. American Mfg. Co., supra; United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574 (1960); Wiley v. Livingston, 376 U. S. 543 (1964).

The trial judge substantially accepted plaintiff's evidence. He found as facts that "While the defendant has on occasion unloaded two pallets of cargo to a draft as early as 1963, the use of this method has been very sporadic and not on a regular basis. Even when the two pallet method was employed it was not the exclusive method used on any ship, for one pallet loads were utilized also." He also found that the occasional unloading of two pallet drafts was not known to the union and its officials until

the incident of February 28, 1967; that the established pallet practice since they were introduced at the Port of Philadelphia has been the use of one pallet drafts for discharge of the ships cargo; that two pallet drafts has not been an established practice on that waterfront. He concluded as a matter of law that "The use of two pallet drafts is a change in the established method of operation and the dispute therefore comes within paragraph 13(d) of the labor contract. The dispute in question is not subject to arbitration but rather to negotiation."

The District Court correctly recognized the strong trend of the Supreme Court to arbitration of labor disputes "* * * unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of the coverage." United Steelworkers v. Warrior & Gulf Navigation Co., supra, pp. 582-583. The trial judge specifically so held in this appeal.

However, the trial court erred in adopting the defense argument that under the employment contract "any change in the established method of operation was subject to negotiation between the parties, not arbitration." Paragraph 13(d) cannot be so construed. The simple reference in Paragraph 13(d) as to changing methods of operation or number of men in gangs reads, "Nothing herein contained shall be construed *as warranting a demand on the part of the union* to change established methods of operation or to change the number of men heretofore employed in gangs, providing that a committee of three representatives of the Union and three representatives of the Employer shall immediately following the execution of this agreement hold meetings for the purpose of reaching an agreement upon the number of men on certain commodities where disputes regarding the number of men may exist." (Emphasis supplied). As is seen the directive about changing established

methods is to the Union alone. It should also be noted that there is no charge or any mention by either side of an existing pallet dispute in 1964 when the agreement was executed.

In addition to the above the Union argues that the next two sentences of Paragraph 13(d) also call for negotiation of the pallet method. The language is "in the event that technological advancements in machinery or methods in the future are introduced by the Employers, the number of men thereforth to be employed for handling the particular commodities shall be the subject of negotiation between the subcommittee herein created." This relates entirely to questions which may arise in the future after the 1964 contract went into effect which was on October 1, 1964. Pallet discharge in the port of Philadelphia has existed, according to the Union, since the nineteen forties, and since World War II, as found by the judge. He also held in Findings of Fact 6 and 7 that "6. While the defendant has on occasion unloaded two pallets of cargo to a draft as early as 1963, the use of this method has been very sporadic and not on a regular basis. 7. Even when the two pallet method was employed it was not the exclusive method used on a ship, for one pallet loads were utilized also." In the light of the revealed factual situation, the two pallet operation, whatever its extent, was in existence prior to the 1964 employment contract and cannot possibly be brought under the part of 13(d) which concerns only advancements in "* * * methods in the future" which might be then introduced by the Employer.

Appelles conclude with the proposition that the findings of fact were not clearly erroneous and were required by the evidence. The latter was completely devoted to pallet operation in the port of Philadelphia. All of the testimony on behalf of the plaintiff and the defendants was from respectively partisan sources. The judge because of

his erroneous conception of the problem before him did pass upon the merits of the method of pallet use in the port since its appearance in the nineteen forties. In line with his decision that the dispute came within 13(d) he found that it was not subject to arbitration but to negotiation.

From the plain statement of 13(d) the question before us was in no way within the scope of that paragraph and therefore, again by the command of the agreement, it was clearly governed by paragraph "28 Grievance Procedure" as above set out.

The judgment of the District Court will be reversed and the cause remanded for the purpose of entering a judgment that the dispute involved be processed by the parties under paragraph "28 Grievance Procedure" of their current employment contract.

APPENDIX D.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 16583.

PHILADELPHIA MARINE TRADE ASSOCIATION,
Appellant

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

(D. C. CIVIL ACTION No. 42228.)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Present: McLAUGHLIN, KALODNER and GANEY, *Circuit Judges.*

JUDGMENT.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District

Court, filed March 14, 1967, be, and the same is hereby reversed, with costs, and the cause remanded for the purpose of entering a judgment that the dispute involved be processed by the parties under paragraph "28 Grievance Procedure" of their current employment contract in accordance with opinion of this Court.

ATTEST:

M. ELIZABETH FERGUSON,
Chief Deputy Clerk.

December 27, 1967.

APPENDIX E.

Pertinent Provisions of Collective Bargaining Agreement.

* * *

"13. The employer to have the right to so regulate the work of stevedoring a ship as to:

(a) Best attain an orderly, safe and efficient movement of the cargo into or out of the vessel.

(b) Protecting the safety and health of the workers.

(c) Making the best of the skill and aptitude of the workers with the right to apply available mechanism and motive power to minimze wasteful manual work.

(d) Nothing herein contained shall be construed as warranting a demand on the part of the union to change established methods of operation or to change the number of men heretofore employed in gangs, providing that a committee of three representatives of the Union and three representatives of the Employer shall immediately following the execution of this agreement hold meetings for the purpose of reaching an agreement upon the number of men on certain commodities where disputes regarding the number of men may exist. In the event that technological advancements in machinery or methods in the future are introduced by the Employers, the number of men thereforth to be employed for handling the particular commodities shall be the subject of negotiation between the subcommittee herein

created. This clause shall not be subject to the grievance and arbitration Clause No. 28. . . ."

• • •

"28. GRIEVANCE PROCEDURE: All disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement and all questions involving the interpretation of this agreement other than any disputes or grievances arising under the terms and conditions of paragraph 13(d) hereof, shall be referred to a Grievance Committee, which shall consist of two members selected by the Employers and two members selected by the Union. . . ."

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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1264.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION and LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1264.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,

Petitioners

v.

PHILADELPHIA MARINE TRADE ASSOCIATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

QUESTION PRESENTED:

Where, in a collective bargaining agreement between an employer association and a union there is a broad arbitration clause which requires that all disputes and grievances and all questions involving the interpretation of the agreement be referred to arbitration, and, where there was an admitted dispute involving the interpretation of the agreement which was not specifically excluded from the arbitration clause, did the Court below properly rule that this dispute should be processed by the parties under the arbitration clause of their contract?

STATUTE INVOLVED.

The Labor Management Relations Act, Section 203(d), 29 U. S. C. A. 173, and Section 301, 29 U. S. C. A. 185.

STATEMENT.

This case arose over a dispute between the parties as to whether frozen meat on pallets could be discharged from a vessel with two pallets to a draft or one pallet to a draft.

Petitioners took the position that only one pallet load should be discharged at a time. Respondent's position was that two pallet loads could be discharged where it was necessary to do so. There was no question as to the pallets being a new method of unloading. It was conceded that pallets have been in use in the Port of Philadelphia since World War II. The only question was whether one pallet could be placed on top of or alongside another pallet so that the two pallet loads could be taken out at the same time. Likewise, there was no suggestion that the two pallet load was to be the exclusive method of discharge. This method was used only occasionally depending upon the stowage of the cargo in the hold and other factors (18a, 76a-77a, 138a).

When this dispute arose on February 28, 1967, respondent offered to process it under the grievance and arbitration procedure of the contract between the parties. Petitioners refused to do so and the longshoremen walked off the job and left the vessel idle (11a, 116a). However, the next day the dispute was actually processed under the grievance and arbitration procedure but the Impartial Arbitrator resigned at the job site arbitration because of the absence of the President of Local 1291. At subsequent meetings between the parties, petitioners contended, based on their unilateral and ex-parte interpretation of the contract, that the dispute came under paragraph 13(d) of the contract and was not subject to arbitration.[1] Respondent contended that the dispute was actually covered by paragraphs 13(a) and

1. Paragraph 13(d) is set forth at (7a-8a).

(c) [2] of the contract and that it was subject to the arbitration clause.

There was, therefore, an admitted dispute as to the interpretation of the contract. Paragraph 28 [3] of the contract contained a broad arbitration clause which provided that "all disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement and all questions involving the interpretation of this agreement . . ." were subject to arbitration. In very general terms, paragraph 28 excepted "disputes or grievances arising under the terms and conditions of paragraph 13(d)", but in a following section, paragraph 28 provided that:

> "Should the terms and conditions of this agreement fail to specifically provide for an issue in dispute, or should a provision of this agreement be the subject of disputed Interpretation, the Arbitrator shall consider port practice in resolving the issue before him." [4]

Respondent contended that whether the operation involved was covered by paragraphs 13(a) and (c) or 13(d) was a matter for the arbitrator to decide. Respondent submitted that this initial or threshold question was subject to arbitration under paragraph 28 because the agreement between the parties failed "to specifically provide for an

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2. Paragraph 13(a) and (c) are set forth at (7a).

3. Paragraph 28 is set forth at (8a-10a).

4. In addition, Paragraph 29 of the contract provided that:

"No steamship Company or Contracting Stevedore and no official, District Council or Local of the International Longshoremen's Association shall make any change in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opinion regarding the meaning of any provisions of this agreement, which cannot be amicably adjusted between the parties shall be adjusted in accordance with Article 28 hereof." (See Exhibit "A" to respondent's complaint.)

issue in dispute" and "a provision of this agreement (was) the subject of disputed interpretation". Respondent agreed that if the arbitrator decided that the operation was covered by paragraph 13(d), that it would then become a matter of negotiation between the parties.

In view of petitioners' refusal to arbitrate this matter, respondent filed its complaint under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. § 185, to compel the submission of the dispute in issue to arbitration.

The District Court heard testimony from the respondent which showed that frozen meat was discharged two pallets to a draft from September, 1966, "right up until recently" (59a-60a); that television tubes have been discharged two pallets to a draft for the past four years (48a); that frozen fish has been discharged two pallets to a draft since 1965 (48a); that other cargo, such as fungicide, nails, white lead, and pipe fittings, has been handled two pallets to a draft since 1965 (63a-65a, 82a); and that wrapping paper has been handled in this manner since 1964 (65a) and tiles since 1965 (64a, 79a-80a).

However, the District Court ignored the broad scope of the arbitration clause. Instead of deciding the threshold question under paragraph 28, the Court erroneuosly became involved in interpreting paragraph 13(d) and deciding the merits of the dispute. On appeal, the Court of Appeals reversed the District Court and ruled that under the arbitration clause and the decisions of this Court, the dispute should have been referred to arbitration.

ARGUMENT.

There Was an Admitted Dispute Involving the Interpretation of the Collective Bargaining Agreement and Under the Arbitration Clause of That Agreement and the Decisions of This Court the Dispute Should Have Been Referred to Arbitration.

There can be no doubt that the dispute in issue involved an interpretation of various provisions of the collective bargaining agreement between the parties. Counsel for petitioners conceded this point and admitted that normally this issue "would fall under the arbitrator's jurisdiction." He said:

> "I may say that involved in this situation also is not merely the question of a disputed provision in the agreement as such, which normally would fall under the arbitrator's jurisdiction, but the very jurisdiction of the arbitrator himself is here involved, and in this respect I think the law is very clear that the arbitrator may not decide his own jurisdiction, but this is for the Court to decide." (23a)

However, the question of the arbitrator deciding his own jurisdiction was not involved in this case. Respondent admitted that the basic question as to whether the dispute was or was not subject to arbitration had to be decided initially by the District Court. Counsel for respondent stated:

> "We do not question the Court's jurisdiction here at all to decide whether or not it should be referred to the arbitrator; as a matter of fact, we are asking the Court to refer the dispute to the arbitrator." (20a)

The above statement completely refutes petitioners' assertion that respondent urged "that the question of arbitrability, itself, was to be decided by the arbitrator, and not by the Court" (Petition p. 5).

The decision of the Court below was in complete accord with the teachings of this Court. In the famous Steelworkers Trilogy cases, this Court made it unmistakably clear that a dispute such as is involved in this case should be referred to arbitration.

In *United Steelworkers v. Enterprise Corp.*, 363 U. S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960), this Court said:

> ". . . the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his . . ." (U. S. at 599, L. Ed. at 1429).

In *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 4 L. Ed. 2d 1409, 80 S. Ct. 1347 (1960), this Court said:

> ". . . An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage . . ." (U. S. at 582-583, L. Ed. at 1417-1418).

> ". . . In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague

and the arbitration clause quite broad. Since any attempt by a court to infer such a purpose necessarily comprehends the merits, the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator . . ." (U. S. at 584-585, L. Ed. at 1419).

In *United Steelworkers v. American Manufacturing Co.*, 363 U. S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960), this Court stated categorically that in cases of this type, the District Courts "have no business weighing the merits of the grievance" and that the processing of even frivolous claims may have therapeutic values. There this Court said:

". . . The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.

The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values

of which those who are not a part of the plant environment may be quite unaware . . ." (U. S. at 567-568; L. Ed. at 1407).

The decision of the Court below was based squarely on the above decisions of this Court. The language of this Court is so controlling that the Court below was compelled to reverse the District court which failed to apply properly these decisions.

Petitioners now contend that the Court below failed "to apply the real intent of the contract as agreed by employer's counsel at trial" (Petition p. 2). This argument is patently without merit. The decision of the Court below is exactly in accord with the real intent and meaning of the contract as explained by counsel for respondent at trial. Counsel's consistent position throughout the trial was summarized at the final argument as follows:

". . . I think the issue is still whether there is an arbitrable issue here. I would say that neither the union nor the employer can take the position arbitrarily that ships are to be knocked off and state that a particular operation comes under 13(d) and is therefore negotiable. As I pointed out before, if it is determined ultimately that this operation is covered under 13(d), and the arbitrator would so rule, there would be no question about it. The only issue that is involved here is whether this comes under 13(a), 13(c), or 13(d); and I would say to Your Honor that it is not for the union to take an arbitrary or unilateral position that it definitely comes under 13(d), and go and knock ships off and refuse to submit that issue to arbitration, because the parties have agreed to a very broad and all-inclusive type of arbitration clause, as Your Honor has mentioned, and under that clause it is very specific that if there is an issue which is not specifically provided for that it must be submitted to arbitration, or if there

is a dispute as to the subject of interpretation of the contract, that that must be referred to the arbitrator. And I would say that under the decisions of the Supreme Court that that is the law of the land." (148a-149a)

The decision of the Court below was also completely in accord with the federal national labor policy as contained in Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U. S. C. A. § 173(d) [5] which favors the adjustment of disputes arising over the "interpretation of an existing collective bargaining agreement" by a "method agreed upon by the parties". See also *Sinclair Refining Co. v. Atkinson,* 370 U. S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328 (1962), and *Wiley v. Livingston,* 376 U. S. 543, 11 L. Ed. 2d 898, 84 S. Ct. 909 (1964).

Respondent respectfully submits that an examination of the record in this case will show that the decision of the Court below was clearly correct; that there is no conflict of decision with this Court; and that there is no important question of Federal law requiring decision by this Court.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANCIS A. SCANLAN,
KELLY, DEASEY & SCANLAN,
Counsel for Respondent.

April, 1968

5. Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U. S. C. A. § 173(d) provides, *inter alia,* that:

"Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . ."